

Children and Families – Revises Ch. DCF 201 – EmR1216

Filed with LRB: November 13, 2012
Publication Date: November 15, 2012
Effective Dates: November 15, 2012 through April 13, 2013
Extension Through: June 12, 2013
Hearing Date: January 14, 2013

Department of Children and Families
Early Care and Education, Chs. DCF 201 - 252

**EMERGENCY RULE – EmR 1216
DCF 201**

**Circumstances for a Waiver to Allow Child Care Subsidy
Payments for a Parent Who Is a Child Care Provider**

The Wisconsin Department of Children and Families orders the creation of s. DCF 201.04 (2j), relating to circumstances for a waiver to allow child care subsidy payments for a parent who is a child care provider and affecting small businesses.

This emergency rule was approved by the Governor on October 19, 2012.

The statement of scope for this rule, SS 054-12, was approved by the Governor on July 30, 2012, published in Register 680 on August 15, 2012, and approved by Secretary Eloise Anderson on August 27, 2012.

Finding of Emergency

The Department of Children and Families finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

Section 49.155 (3m) (d), Stats., as affected by 2011 Wisconsin Act 32, provides that no child care subsidy funds may be used for child care services that are provided for a child by a child care provider who is the parent of the child or who resides with the child. In addition, no child care subsidy funds may be used for child care services that are provided by another child care provider if the child's parent is a child care provider. The prohibition on assistance does not apply if the child's parent has applied for, and been granted, a waiver. Implementation of an emergency rule specifying the circumstances under which the department or an agency will grant a waiver is necessary to protect certain vulnerable children.

Analysis Prepared by the Department of Children and Families

Statutory authority: Sections 49.155 (3m) (d) 4., Stats.

Statutes interpreted: Section 49.155, Stats.

Related statute or rule: NA

Explanation of Agency Authority

Section 49.155 (3m) (d), Stats., as affected by 2011 Wisconsin Act 32, provides that no child care subsidy funds may be used for child care services that are provided for a child by a child care provider who is the parent of the child or who resides with the child. In addition, no child care subsidy funds may be used for child care services that are provided by another child care provider if the child's parent is a child care provider.

These prohibitions do not apply if the child's parent has applied for, and been granted, a waiver by the county department, agency, or by the department. Section 49.155 (3m) (d) 4., Stats., directs the department to promulgate rules that specify the circumstances, or standards for determining the circumstances, under which the local agency or the department will grant a waiver.

Summary of the Emergency Rule

A parent who is a child care provider may apply to the child care administrative agency for a waiver requesting assistance for child care services provided for the provider's child by another child care provider. The department or agency may grant a waiver if any of the following apply:

- The department or agency determines that assistance is appropriate because the child has a special need.
- The parent is the child's foster parent.
- The parent is the child's guardian or interim caretaker and is receiving subsidized guardianship payments for the care and maintenance of the child.
- The parent is the child's kinship care relative, the child has been placed with the relative under a court order, and the relative is receiving kinship care payments for the care and maintenance of the child.
- Both of the following apply:

- The child’s biological parent is a dependent minor child under the age of 18 who attends high school or participates in a course of study meeting the standards established by the state superintendent of public instruction for the granting of a declaration of equivalency of high school graduation.
- The dependent minor parent and the child reside with a person who is considered the parent for purposes of the child care subsidy program and who may be the dependent minor parent’s custodial parent, kinship care relative, foster parent, or guardian or interim caretaker receiving subsidized guardianship payments for the care and maintenance of the dependent minor parent.

No waiver of the prohibition on using subsidy funds for child care services that are provided for a child by a child care provider who is the parent of the child or who resides with the child is permitted.

Summary of Factual Data and Analytical Methodologies

The analytical methodologies for the rule include the following:

- Not discouraging child care providers from becoming out-of-home care providers for children in the child welfare system.
- Supporting the efforts of teen parents to graduate from high school.
- Not creating a situation in which a child care provider caring for his or her own child with special needs is not able to provide appropriate care for the children attending the provider’s child care center.

No data was used.

Summary of Related Federal Requirements

None

Comparison to Rules in Adjacent States

The department is not aware of any statutes or rules in adjacent states that prohibit low-income parents who are child care providers from receiving assistance to send their own children to another child care provider. Parents are generally prohibited from receiving assistance for care of their own children.

Effect on Small Business

The rule will have a positive effect on small businesses. Most child care providers are small businesses. Exempting small businesses would be contrary to the statutory objective. There are no compliance or reporting requirements or design or operational standards in the rule.

Analysis Used to Determine Effect on Small Business or in Preparation of Economic Impact Analysis

The implementation of s. 49.155 (3m) (d), Stats., will affect parents who are child care providers and who have been previously eligible for Wisconsin Shares assistance to send their

own children to another child provider. The department has identified 44 current child care providers who will lose subsidy eligibility by this new statutory prohibition on assistance.

Under the rule, parents who are child care providers will not be affected by the statutory prohibition on assistance if they are granted a waiver. The rule will have a positive economic impact on the providers who receive a waiver.

Agency Contact Person

Erik Hayko, Division of Early Care and Education, (608)266-9045, erik.hayko@wisconsin.gov.

SECTION 1. DCF 201.04 (2j) is created to read:

DCF 201.04 (2j) CHILDREN OF PROVIDERS. (a) Unless a child’s parent has applied for and been granted a waiver under par. (b) and (c), no funds distributed under s. 49.155 (3m) (a), Stats., may be used for any of the following:

1. Child care services provided for a child by a child care provider who is the parent of the child or who resides with the child.
2. If a child’s parent is a child care provider, child care services provided for the child by another child care provider.

Note: Funds distributed under s. 49.155 (3m) (a), Stats., include funds used to reimburse child care providers; funds distributed to county departments and tribal governing bodies for child care services under s. 49.155, Stats.; funds distributed to private nonprofit agencies that provide child care for children of migrant workers; and funds used to reimburse W-2 agencies for child care that the agencies provide to the children of W-2 participants and applicants.

(b) A parent who is a child care provider may apply to the agency for a waiver of the prohibition in par. (a) 2., requesting that funds distributed under s. 49.155 (3m) (a), Stats., be used for child care services provided for the provider’s child by another child care provider. No waiver of the prohibition in par. (a) 1. is permitted.

(c) The department or agency may grant a waiver requested under par. (b) if any of the following apply:

1. The department or agency determines that assistance is appropriate because the child has a special need.

Note: See s. DCF 201.02 (20).

2. The parent is the child's foster parent.

3. The parent is the child's guardian or interim caretaker and is receiving subsidized guardianship payments under s. 48.623, Stats., for the care and maintenance of the child.

Note: This provision includes a guardian or interim caretaker who is receiving payments pursuant to an agreement entered as part of the subsidized guardianship demonstration project administered by the Bureau of Milwaukee Child Welfare before July 1, 2011, under s. 48.62 (5), 2009 Stats.

4. The parent is the child's kinship care relative, the child has been placed with the relative under a court order, and the relative is receiving kinship care payments under s. 48.57 (3m) or (3n), Stats, for the care and maintenance of the child.

Note: Section DCF 58.04 (1) provides that if a relative applies for kinship care payments for a child who was placed in the relative's home under a court order, the relative shall apply for a license to operate a foster home under ch. DCF 56. Under ss. DCF 58.065 (1) and (2), the relative may be eligible to receive kinship care payments pending the decision on the foster care application. If the relative's application to operate a foster home is denied or the relative is otherwise determined to be ineligible for licensure, the relative may be eligible to continue to receive kinship care payments if a court orders the child to remain in the kinship care relative's home under s. DCF 58.065 (3) or the court or panel approved continuation of the placement under s. DCF 58.066 (2). Many individuals who are ineligible for a foster care license would also be ineligible to be a child care provider, but the determination is made on a case-by-case basis.

5. Both of the following apply:

a. The child's biological parent is a dependent minor child under the age of 18 who attends high school or participates in a course of study meeting the standards established by the state superintendent of public instruction for the granting of a declaration of equivalency of high school graduation.

b. The dependent minor parent and the child reside with a person who is considered the parent for the purposes of this chapter and who may be the dependent minor parent's custodial

parent, kinship care relative, foster parent, or guardian or interim caretaker receiving a payment under s. 48.623, Stats., for the care and maintenance of the dependent minor parent.

SECTION 2. INITIAL APPLICABILITY. This rule first applies to a parent receiving a subsidy for child care services under s. 49.155, Stats., on the effective date of the rule upon the first redetermination of the parent's eligibility under s. DCF 201.04 (3) following the effective date of the rule.

SECTION 3. EFFECTIVE DATE. This rule shall take effect upon publication as provided in s. 227.24 (1) (c), Stats.